IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2414 OF 2005

WITH

WRIT PETITION NOS.3403 OF 2004 & 5440 OF 2002

W. P No.2414/05 :

Utkarsh Shikshak Sangh. ...Petitioner.
Versus
The State of Maharashtra & Ors. ...Respondents.

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Mr.S. P. Saxsena with Mr. M. V. G.Krishna for the Petitioner.
Mrs. Sushma Bhende, AGP for Respondent No.1.
Mr. A. S. Rao for Respondent Nos.2 and 3.
Mr.Milind Vasudeo with Mr. S.A. Sawant for Respondent No.5.

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W. P No.3403/04 :

Kalyan Dombivli Mahanagarpalika Shikshak
Sangharsh Samithi (Proposed) ...Petitioner.
Versus
The Commissioner, Kalyan-Dombivli
Municipal Corporation & Ors. ...Respondents.

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Mr.Sanjiv Sawant with Mr. A. A. Garge for the Petitioner.
Mr. A. S. Rao for Respondent Nos.1 to 3.
Mr.V. N. Tayade for Respondent No.6.

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W. P No.5440/02 :

Akhil Kalyan Dombivli Mananagar
Palika Prathamik Shikshak Sangh. ...Petitioner.
Versus
The Municipal Corporation of City of
Kalyan & Dombivli & Ors. ...Respondents.
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Mr. A. A. Garge for the Petitioner.
Mr. A. S. Rao for Respondent No.1.
Mrs. Sushma Bhende, AGP for Respondent No.4.
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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

June 20, 2005.

PORAL JUDGMENT (PER DR. D. Y. CHANDRACHUD, J:

Sometime in the year 1994-95, the limits of the Kalyan Dombivli Municipal Corporation came to be altered inter alia by the inclusion of 27 villages. 28 Primary Schools were situated therein. On 12th July 2002, the State Government issued a notification in exercise of its power under Section 3(3)(a) of the Bombay Provincial Municipal Corporations Act, 1949. Thereby, the limits of the City of

Kalyan-Dombivli were altered so as to exclude the area comprised therein from the aforesaid 27 villages. The process of transferring teachers working in 28 Marathi Medium Schools in those 27 villages to the Thane Zilla Parishad was thereupon commenced.

2. The Primary Teachers' Association moved a petition under Article 226 of the Constitution before this Court (Writ Petition 5440 of 2002) claiming to represent the interest of 71 Primary Teachers. A Writ of Mandamus was sought in the petition directing the Municipal Corporation to absorb the members of the Association into the services of the Corporation and for an order restraining the Corporation and the Municipal School Board from transferring the services of the teachers whom the Association represented. Consequential reliefs, including the payment of regular salary, were sought and it was prayed in the alternative that the status quo should be maintained in respect of the members of the Association as it obtained prior to the notification excluding 27 villages from the limits of the Municipal Corporation.

3. On 5th October 2002, a Division Bench of this Court issued notice on the petition and directed that in the meantime, the Corporation shall not make any further transfers on account of the exclusion of the 27 villages. On 9th June 2004, a Division Bench of this Court granted rule on the petition. The interim order was, however, vacated and there was a direction for the release of the salary which had been withheld on the incumbents joining their posts. It appears that on 6th April 2004, the Municipal Corporation transferred the services of 119 Primary Teachers to the Thane Zilla Parishad. Those Primary Teachers were not working in the Schools situated in the 27 deleted villages as on 12th July 2002. This action of the Corporation was challenged in a fresh Writ Petition (Writ Petition 3403 of 2004) filed by Kalyan-Dombivali Mahanagar Palika Shikshak Sangharsha Samiti. This petition was filed on behalf of certain Primary Teachers who claimed to have been working from the inception with the Municipal Corporation. On 1st July 2004, a Division Bench of this Court passed a further direction recording that the

interests of justice would be met if there was no stay to the orders of transfer dated 6th April 2004. The Division Bench directed that the persons covered by the order should join their postings immediately. It was made clear that their jointing shall be without prejudice to their rights and contentions in the petition. The Court ordered that salaries should be released immediately after the employees concerned joined their designated posts. However, an opportunity was granted to a representative Association of the teachers to make a representation before the State Government. The Court, however, observed that while effecting postings in pursuance of the order dated 6th April 2004, care should be taken to ensure that those teachers should be posted only to 27 villages which had been transferred out of the Corporation to the Zilla Parishad.

4. In pursuance of the order passed by the Division Bench, representations were submitted to the State Government which resulted in a Government Resolution dated 24th March 2005. The Government Resolution records that a meeting was convened

before the Minister for Urban Development. In the course of that meeting, it was revealed in a report of the Administrative Officer of the Municipal School Board that there were 85 vacant posts in the Municipal Corporation. Hence, it was proposed that 85 teachers (out of 119 who would be displaced) could be absorbed in the Municipal Corporation against the said vacancies. The Resolution of the Government provides that in accordance with the Seniority List of 1st April 2004, out of 119 teachers who were working in the 27 villages which were excluded by Government' snotification dated 12th July 2002, 85 teachers would be absorbed in accordance with their seniority. Consequential directions were issued in the Government Resolution in regard to the working out of the roster and on other related issues.

5. On behalf of the Petitioners, it has been submitted that the Government Resolution dated 24th March 2005 is arbitrary and should be quashed and set aside. Counsel appearing on behalf of the Petitioners urged that originally in 1994-95, teachers who were in

the service of the Zilla Parishad came to be absorbed in the service of the Municipal Corporation upon the inclusion of 27 villages within Municipal limits. Hence, it was submitted that upon the exclusion of these 27 villages by a notification of the Government dated 12th July 2002, those teachers who had been absorbed in 1994-95 as a result of the inclusion of certain villages must now be repatriated. Another limb of the submission which has been urged before us is that the teachers whose interests are being represented by the Petitioners in these proceedings had absolutely no connection with the aforesaid 27 villages and having been regarded as employees of the Municipal Corporation, it would be unfair and arbitrary on the part of the Government to repatriate their services as would be the effect of the Government Resolution dated 24th March 2005.

6. In considering these submissions, it would, at the outset, be necessary to note that originally in 1994-95 several areas came to be included within Municipal limits. Teachers who were engaged for imparting education in primary schools situated in these areas came

to be absorbed by the Municipal Corporation. They were upon absorption, integrated into the service of the Municipal Corporation. On 12th July 2002, a notification was issued by the State Government in exercise of its powers under Section 3(3)(a) of the Bombay Provincial Municipal Corporations Act, 1949 by which areas comprised in 27 villages came to be excluded from Municipal limits. The teachers who were working in 28 Primary Schools situated in the aforesaid areas were liable to be rendered surplus, save and except to the extent to which their services could be accommodated in the vacancies which had arisen in Municipal employment. The plea of the Petitioners that the State Government ought to have repatriated those teachers whose services were absorbed into the Municipal Corporation at the time of the original inclusion of 27 villages in 1994-95, cannot be accepted. Upon absorption, all the teachers became part of an integrated cadre of Primary Teachers working in the service of the Municipal Corporation. In such a case, the principle which was enunciated by the Supreme Court in **State of Jammu & Kashmir vs. T.N. Khosa,** AIR 1974 SC 1, following the earlier decision in **Roshan**

Lal vs. Union of India, AIR 1967 SC 1889, must be applied. Employees who are drawn into an integrated cadre as in the present case, lose their birth marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. The Supreme Court has held that in such a case "their genetic blemishes disappear once they are incorporated into a common class and cannot be revived so as to make equals, unequals once again". Employees who were absorbed into the service of the Municipal Corporation in the present case in 1994-95, were constituted into a common class of service and it would have been arbitrary to single them out for repatriation. We are of the view that there would be no valid justification for the State in such a case to single out such employees for repatriation. The Joint Secretary in the Urban Development Department, has in his affidavit filed on behalf of the State Government averred that generally speaking when a person is appointed in an establishment, he or she ceases to be an employee of the previous establishment and there was only one employer viz.,

Kalyan-Dombivli Municipal Corporation, in respect of all the teachers concerned in the present case. The State Government has, in these circumstances, decided that from out of the teachers who were working in the 27 villages who were senior enough in the Seniority List would be absorbed in the services of KDMC. During the course of the meeting that was convened by the Minister for Urban Development, it was found that there were 85 vacancies of primary teachers in the Municipal Corporation and consequently it was decided that out of the 119 teachers who were liable to be transferred to the Zilla Parishad, 85 could be absorbed in the Municipal Corporation. During the course of the hearing of these Petitions, we have been informed by Counsel for the Municipal Corporation that there are now 93 vacancies. Hence 93 out of the 119 teachers will be absorbed by the Municipal Corporation in accordance with seniority. We record the assurance of the Municipal Corporation. In a case such as the present, we are conscious of the fact that any decision by the State Government is bound to cause a certain degree of hardship to some segment of employees. That, however, is not a

circumstance which will necessarily lead to a finding of constitutional invalidity. So long as the State applies a rationale criterion in determining the mode of repatriation so as to govern the situation after the exclusion of certain areas from Municipal limits, the policy adopted by the Government should not be lightly disturbed.

7. We can draw sustainance in the view which we form in this matter from a judgment of a Division Bench of this Court in **Shashikala Vasant Baviskar vs. Municipal Corporation for the City of Jalgaon,** 2005 (2) MhLJ 1086. The Division Bench held that once certain employees were absorbed in the employment of a Municipal Council or Municipal Corporation on an extension of the area of operation of the Council or as the case may be, of the Corporation, they would stand at par with other employees and could not be given differential treatment. The Court held that such employees are entitled to have their past service counted for the purpose of determining their seniority in the employment of the Municipal Council (or Corporation) and those employees could not be picked up as a

class for subjecting them for a further transfer. We also note that on 15th December 1984, a resolution had been issued by the State Government to govern situations involving the extension of the limits of a Municipal Council or as the case may be, a Municipal Corporation as a result of which transfers were required to be carried out of the employees of the Primary Schools in the areas of the erstwhile villages. While laying down the guiding principles, the Government Resolution inter alia reiterates that there would be a common Seniority List of the employees who were originally in the employment of the Municipal Council or as the case may be, the Municipal Corporation and those who have been absorbed upon the extension of Municipal limits, without any discrimination.

8. In these circumstances, having considered the submissions urged on behalf of the Petitioners, we do not find any reason to exercise our jurisdiction under Article 226 of the Constitution. The petitions shall accordingly stand disposed of. In the circumstances of these cases, there shall be no order as to costs.

13

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